

IN THE MATTER OF

2943174 CANADA INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3748. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the Canadian company and its officer to have scientific substantiation for claims that any product or program controls appetite, increases human metabolism, reduces body fat, causes weight loss, causes long-term or permanent weight loss, reduces cholesterol, or provides any weight-related benefit. The consent order also requires scientific substantiation for claims about the benefits or efficacy of any drug or device. Finally, the consent order prohibits misrepresentations about the existence or results of any test or study.

Appearances

For the Commission: *Ronald Waldman and Donald G. D'Amato.*

For the respondents: *Jeffrey S. Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that 2943174 Canada Inc., a corporation, and Patrice Runner, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.

2. Respondent Patrice Runner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, participates in, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of 2943174 Canada Inc.

3. Respondents have advertised, offered for sale, sold, and distributed products to the public, including "Svelt-PATCH," a skin patch that purports to melt away body fat. The Svelt-PATCH is a "drug" or "device" within the meaning of Sections 12 and 15 of the

Federal Trade Commission Act. Advertisements for Svelt-PATCH have appeared in numerous publications, including but not limited to: TV Guide, Woman's Day, Cosmopolitan, Red Book Magazine, Woman's World, American Woman, McCalls, Complete Woman, Family Magazine, Ladies Home Journal, Women's Own, The National Enquirer, The Star, USAir, World Traveler, Luxury Lifestyle, Farm Magazine, Hemisphere, Soap Opera Digest, Dell Puzzle, Sterling Woman's Group, Low Fat Meals, Black Group, Grit, Destination, Hairdo Ideas, Harris Hairdo, Lose Weight Stay Fit, All Around Kentucky, Mother Earth News, True Story Plus, The Globe, The Examiner, The Sun, San Antonio, The Denver Post, The New York Daily News, The Weekly World News, The LA Daily News, The Chicago Sun Times, The Boston Globe, Newsday, The Topeka News, The New York Post, and have been distributed as free standing inserts through Valassis FSI.

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents have disseminated or have caused to be disseminated advertisements for Svelt-PATCH, including but not necessarily limited to the attached Exhibit A (a newspaper advertisement). These advertisements contain the following statements:

"LOSING WEIGHT:

'Amazing Skin Patch Melts Away Body Fat'

Results of a study conducted for the United Research Center by G. Fleming

* Clinically tested in the United States

Weight-loss patches have been scientifically tested in the USA and are used in European hospitals and clinics.

In the United States, Dr. Marvin Kaplan recently tested the weight-loss patch on 100 individuals.

... [H]ere are the results:

* The measured effectiveness of the weight-loss patch was 100%: absolutely all participants lost weight.

* Fifty-six percent of the participants lost at least 20 pounds in 2 months (between 20 and 71 pounds in only 2 months).

* Average weight losses [sic] in women was 4.9 pounds the first week, 12.8 pounds the first month, and 21.9 pounds in 2 months.

* Average weight loss in men was 4.7 pounds the first week, 15.7 pounds the first month, and 25.1 pounds in 2 months.

....

Svelt PATCHES contain concentrated fucus. In contrast with most weight-loss products--which only work for a few hours following their consumption--SveltPATCH fucus is absorbed by your body, through the skin, *the entire* day and while you sleep--up to 24 hours per day.

....
How fucus helps your body
☒ Controls your appetite.
☒ Stimulates your metabolism
☒ Maintains weight loss . . .
☒ Reduces cholesterol
(Exhibit A)

6. Through the means described in paragraph five, respondents have represented, expressly or by implication, that:

- A. Svelt-PATCH controls appetite.
- B. Svelt-PATCH significantly increases human metabolism.
- C. Svelt-PATCH significantly reduces body fat.
- D. Svelt-PATCH causes significant weight loss.
- E. Svelt-PATCH causes long-term or permanent weight loss.
- F. Svelt-PATCH lowers serum cholesterol levels.

7. Through the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. Through the means described in paragraph five, respondents have represented, expressly or by implication, that clinical evidence prove that Svelt-PATCH causes significant weight loss.

10. In truth and in fact, clinical evidence does not prove that Svelt-PATCH causes significant weight loss. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

LOSE WEIGHT: **"Amazing Skin Patch Melts Away Body**

Results of a study conducted for the United Research Center by G. Fleming

- Clinically tested in the United States
- Recommended by doctors and pharmacists
- Hundreds of thousands of boxes sold in a few months in European pharmacies (simply by word-of-mouth).

Is the once-a-day *Swift PATCH* really revolutionary? And does it really give the promised results?

Following a survey, the UNITED Research Center is so convinced of the efficiency of this new weight-loss plan that now, for the first time, it is making an at-home, risk-free trial offer of the famous *Swift PATCH* Weight-Loss Plan to anyone wishing to lose weight and stay slim — with no obligation to buy. Read how you can take advantage of this special offer.



The new *Swift PATCH* Weight-Loss Plan is now available in the United States without prescription.

Below you will discover:

- How the dual-action *Swift PATCH* Weight-Loss Plan works.
- How it makes you lose weight—really lose weight. Effectively. By eating up to 5 times daily. With no medication. No strenuous exercise.
- Why it guarantees such long-lasting results.
- How, for the first time in the United States you can receive your genuine *Swift PATCH* Weight-Loss Plan, with the same *Swift PATCHES* as those sold in European pharmacies, for a 30-day at-home risk-free trial offer—with no obligation to buy.

After having surpassed the effectiveness of all methods for quelling smoking, Anti-Tobacco Patches created a world-wide revolution.

Now the new *Swift PATCH* Weight-Loss Plan is also enjoying phenomenal success in Europe. Within the next few years, this plan is likely to take the lead over all other weight-loss programs.

Finally available in the United States, you can now obtain an at-home risk-free trial of this plan—with no obligation to buy. That way, you can see the spectacular results of the *Swift PATCH* Weight-Loss Plan for yourself. Here is how it works:

The weight-loss plan of the 21st century is now available.

Yes. The *Swift PATCH* Weight-Loss Plan can finally help you lose weight. Really

lose weight. Quickly. Easily. Eating up to 5 meals a day. With no medication. Without any strenuous exercise. This Plan guarantees long-lasting results. With a minimum loss of water weight. And a minimum loss of muscle.

Thousands have been proven. Thousands of them.

How many pounds do you want to lose? 15 pounds, 25 pounds, 35 pounds? More than 45 pounds? The new *Swift PATCH* Weight-Loss Plan can easily help you lose weight.

Doctor Marvin Kaplan observed weight losses of as much as: 16 pounds the first week • 25 pounds in 2 weeks • 33 pounds in 3 weeks • 41 pounds in 1 month • 71 pounds in 2 months.

Weight-loss patches have been scientifically tested in the USA and are used in European hospitals and clinics.

In the United States, Dr. Marvin Kaplan recently tested the weight-loss patch on 100 individuals. All participants had already tried many other weight-loss schemes, over the

past years, without success. Twenty-five percent of them were then doubtful about how well the weight-loss patch would work. But here are the results:

- The measured effectiveness of the weight-loss patch was 100%: steadily all participants lost weight.
- Fifty-six percent of the participants lost at least 20 pounds in 2 months (between 20 and 71 pounds in only 2 months).
- Average weight losses in women was 4.9 pounds the first week, 12.8 pounds the first month, and 28.9 pounds in 2 months.

Average weight loss in men was 4.7 pounds the first week, 13.7 pounds the first month, and 25.1 pounds in 2 months.

How does the *Swift PATCH* Weight-Loss Plan work?

The *Swift PATCH* Weight-Loss Plan includes:

1. A weight-loss plan which begins by explaining in detail:

- How to let your body burn up 77% more calories than it absorbs — easily and eating up to 5 meals a day.
- How to easily speed up your body's metabolism.

• How to maintain losses of water and fat

• How to minimize muscle loss — and even increase muscle mass to get your body back in shape.

2. Stick-on *Swift PATCHES*.

Just put one stick-on *PATCH* anywhere on your body. Replace it with another stick-

What is focus?

Focus is a type of natural digest containing very high levels of essential ingredients. It's called "Focus" because it's the first to discover focus's ability to absorb fat and to trigger the "metabolism" of fat. Focus is now recommended by many physicians to those who want to lose weight.

Focus is your daily "focus". It also contains an extraordinary amount of vitamins — 15% of each essential vitamin (A, B, C, D, E, K, P, and others) — in its daily dose.

How focus helps your body

1) Controls your appetite.

2) Stimulates your metabolism: induces shock, stimulates protein synthesis and vitamin C stimulates cellular regeneration.

3) Stimulates the metabolism of glucose, and helps your body maintain blood sugar levels (prevents hypoglycemia) by regulating the metabolism of fat.

4) Controls and balances the potassium hormones through the very large quantity of iodine which contains many beneficial effects on the metabolism of fat.

5) Acts on the endocrine system: stimulates the thyroid gland and controls body secretions; stimulates protein synthesis; stimulates cellular metabolism.

6) Stimulates weight loss with hydrocortisone and cyromedolone.

7) Stimulates weight loss with hydrocortisone and cyromedolone.

8) Stimulates weight loss with hydrocortisone and cyromedolone.

9) Stimulates weight loss with hydrocortisone and cyromedolone.

10) Stimulates weight loss with hydrocortisone and cyromedolone.

11) Stimulates weight loss with hydrocortisone and cyromedolone.

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19) Stimulates weight loss with hydrocortisone and cyromedolone.

20) Stimulates weight loss with hydrocortisone and cyromedolone.

21) Stimulates weight loss with hydrocortisone and cyromedolone.

22) Stimulates weight loss with hydrocortisone and cyromedolone.

23) Stimulates weight loss with hydrocortisone and cyromedolone.

24) Stimulates weight loss with hydrocortisone and cyromedolone.

25) Stimulates weight loss with hydrocortisone and cyromedolone.

Exhibit A

"Fucose is registered as a food additive and a weight-control product by the United States Food and Drug Administration. And that, for me, is as good as the Bible".

You will soon see for yourself how quick and effective such PATCH Weight-Loss Plan results really are. You will be very pleased with your decision. We guarantee this formally—and in writing.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1.a. Respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.

1.b. Respondent Patrice Runner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of 2943174 Canada Inc.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondents*" shall mean 2943174 Canada Inc., a corporation, also doing business as UNITED RESEARCH CENTER, INC., its successors and assigns and its officers; Patrice Runner, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that such product:

- A. Controls appetite;
- B. Increases human metabolism;
- C. Reduces body fat;
- D. Causes weight loss;
- E. Causes long-term or permanent weight loss;
- F. Reduces cholesterol levels; or
- G. Provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefit,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Svelt-PATCH, or any other "drug" or "device" as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, food, drug, or device, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

V.

It is further ordered, That respondents shall pay to the Commission as consumer redress the sum of three hundred and seventy-five thousand dollars (\$375,000) no later than January 15, 1997. Such payment shall be deposited into an escrow account, to be

established by the Commission for the purpose of receiving payment due under this order.

The funds paid by respondents shall, in the direction of the Commission, be used by the Commission to provide direct redress to purchasers of Svelt-PATCH in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer the funds from the escrow account to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

Respondents shall assist the Commission, and its agents, in locating and producing all records necessary to conduct any redress made under this paragraph, including, but not limited to, records identifying the names, addresses, and telephone numbers of consumers who paid for goods since January 1, 1994, and the amount the consumer paid including shipping and handling.

VI.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation;

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and

D. All records needed to effectuate any redress made pursuant to paragraph V herein.

VII.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify

the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

It is further ordered, That respondent Patrice Runner, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment relating to the sale of any dietary supplement, drug, or device, as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, for which any health, weight loss, weight maintenance, or cholesterol reduction claim is made. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

WILLIAM E. SHELL, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3749. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the former officer of Interactive Medical Technologies, which market cellulose-bile products, from assisting entities that he knows or should know are making false, misleading or unsubstantiated claims for any weight loss, fat reduction or cholesterol reduction product or program, requires the monitoring of the business practices of certain parties to whom assistance is provided, and requires Shell to pay \$20,000 in redress over a period of one year; to post a \$1 million performance bond before he markets Lipitrol or any similar product, or holds any ownership interest or official position in any business that markets Lipitrol or any similar product; and a \$250,000 bond before he markets any weight loss, fat reduction or cholesterol reduction product or program or holds an ownership interest or official position in a business that markets any weight loss or fat or cholesterol reduction product or program.

Appearances

For the Commission: *Nadine Samter and Patricia Hensley.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Interactive Medical Technologies, Ltd., and Effective Health, Inc., corporations, and William Pelzer, Jr., individually and as a former officer of Interactive Medical Technologies, Ltd., and Effective Health, Inc., and William E. Shell, M.D., individually and as a former officer of Interactive Medical Technologies, Ltd. ("respondents"), have violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Interactive Medical Technologies, Ltd. ("IMT"), is a Delaware corporation with its principal office or place of business at 2139 Pontius Avenue, Los Angeles, California.

2. Respondent Effective Health, Inc. ("EHI"), is a California corporation with its principal office or place of business at 2139 Pontius Avenue, Los Angeles, California. EHI is a wholly-owned subsidiary of IMT.